

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

EDWIN BOYER,

Plaintiff

V.

JEFFREY BEARD, et al.,

Defendants

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CIVIL NO. 3:CV-06-432

(Judge Kosik)

ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

Plaintiff Edwin Boyer filed this civil rights action pursuant to 42 U.S.C. § 1983 on February 28, 2006. At the time, Boyer was an inmate at the State Correctional Institution at Camp Hill, Pennsylvania. He was thereafter released from state custody in March of 2007, and provided the court with a change of address - 118 E. Ross Street, Lancaster, Pennsylvania, 17603. (Doc. 39.) Discovery in this case is scheduled to conclude on October 4, 2007. Defendants previously filed a motion to depose Plaintiff, which was granted. Presently pending is a motion for sanctions filed by Defendants on September 26, 2007. (Doc. 47.) A brief and appendix have also been filed in support of the motion. (Docs. 48, 49.) The basis of the motion is Plaintiff's failure to appear for his deposition which was previously scheduled by Defendants to take place on September 18, 2007, in Camp Hill, Pennsylvania. Defendants state that they served

Plaintiff at his last known address by regular mail on August 31, 2007, and also attempted to serve him by certified mail, but the return receipt was returned unclaimed. As sanctions, Defendants seek the dismissal of this action with prejudice based upon Plaintiff's failure to appear.

The court will direct Plaintiff to respond to the motion within ten (10) days. It is possible that Plaintiff has relocated and has failed to provide the court with a current address. Pursuant to the Standing Practice Order issued in this case on March 9, 2006 (Doc. 6), Plaintiff has the affirmative obligation to keep the court informed of any address changes. The failure to do so will result in the Plaintiff being deemed to have abandoned the lawsuit. (Id. at 4.)

With this said, Plaintiff will be afforded ten (10) days to respond to Defendants' motion for sanctions. The failure to do so will result in the court's conclusion that Plaintiff no longer wishes to pursue this action particularly in light of the facts that the court has had no contact from Plaintiff since his release from prison and his apparent failure to appear at his scheduled deposition. When a plaintiff fails to prosecute a case or comply with an order of court, dismissal of his action is appropriate. See Federal Rule of Civil Procedure 41(b); Link v. Wabash Railroad Co., 370 U.S. 626, 629 (1962).

ACCORDINGLY, THIS 1ST DAY OF OCTOBER, 2007, IT IS HEREBY ORDERED THAT within ten (10) days from the date of this Order, Plaintiff shall file a response to Defendants' Motion for Sanctions or risk the dismissal of this action for the reasons discussed above.

/S/ EDWIN M. KOSIK
United States District Judge